Supreme Court, U.S.
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NO. 04-420

IN THE

Supreme Court of the United States

ROBERT P. LARGESS, ET AL.,

Petitioners,

v.

SUPREME JUDICIAL COURT FOR THE STATE OF MASSACHUSETTS, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENT, JUDITH A. McCARTHY'S OPPOSITION

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QUESTIONS PRESENTED

I. Whether Petitioners have standing to bring suit given their lack of injury.

II. Whether, in reviewing the state's marriage license laws under the state Constitution, the Commonwealth of Massachusetts highest court violated Article IV, § 4, of the United States Constitution.

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STATEMENT OF THE CASE

A. BRIEF DESCRIPTION OF THE CASE

On November 18, 2003, the Supreme Judicial Court of Massachusetts held that barring an individual from the protections, benefits and obligations of civil marriage solely because that person would marry a person of the same sex violates the Massachusetts Constitution. *Goodridge* v. *Dep't of Pub. Health*, 798 N.E.2d 941, 948 (Mass. 2003). The *Goodridge* Court stayed entry of judgment for 180 days to allow the Massachusetts Legislature to take any actions it deemed appropriate. *Id.*, at 970.

B. PROCEDURAL HISTORY AND DISPOSITION

On May 11, 2004, Petitioners Robert P. Largess, Rep. Mark J. Carron, Rep. Emile J. Goguen, Rep. Robert S. Hargraves, Rep. Peter J. Larkin, Rep. James R. Miceli, Rep. Phillip Travis, Sen. Steven C. Panagiotakos, Rep. Christopher P. Asselin, Rep. Edward G. Connolly, Rep. John A. Lepper, Rep. Elizabeth A. Poirier (hereinafter, Petitioners), filed an amended complaint seeking preliminary and permanent injunctive relief, declaratory relief, and a temporary restraining order against the Supreme Judicial Court Justices; the Department of Public Health; Christine C. Ferguson, Commissioner of the Massachusetts Department of Public Health; Judith A. McCarthy, City Registrar for the City of Boston; and the City and Town Clerks 1-350 (hereinafter "Respondents").

In moving for a preliminary injunction, the Petitioners contended that the SJC violated the separation of powers established in the Massachusetts constitution, thus violating the United States Constitution's Guarantee Clause by hearing the

Goodridge case and redefining the term marriage. Respondent Judith A. McCarthy, in her official capacity as City Registrar for the City of Boston, argued that the District Court should deny the Petitioners' motion for a preliminary injunction on the grounds that the District Court lacked jurisdiction and that the Petitioners suffered no actual injury and hence were without standing. Additionally, Respondent McCarthy challenged Petitioners' Guarantee Clause claim, as a nonjusticiable political question.

The District Court heard the Petitioners' motion on May 12, 2004. On the next day, May 13, 2004, the District Court denied the Petitioners' motion. The District Court rejected the Petitioners' arguments, finding that the Massachusetts Legislature transferred subject matter jurisdiction to the judicial branch in cases involving marital disputes, including matters concerning the validity of a marriage. Further, the District Court found the Supreme Judicial Court's interpretation of the term 'marriage' was "a legitimate exercise of that court's authority and responsibility to decide with finality all issues arising under the Massachusetts Constitution." *Largess* v. *Supreme Judicial Court for the State of Massachusetts*, C.A. No. 04-10921-JLT (May 13, 2004) p. 10.

The Court of Appeals for the First Circuit denied Petitioners' Request for an injunction pending appeal on May 14, 2004, on the ground that the Petitioners' showing so far as to likelihood of success was not sufficient to justify interim relief. The Court of Appeals for the First Circuit later affirmed the district court's denial of injunctive and declaratory relief, on the grounds that the Massachusetts Supreme Judicial Court's resolution of the same-sex marriage issue, subject to override by the voters through the state constitutional amendment process, did not plausibly

constitute a threat to a republican form of government. Accordingly, the Court held there was no basis for a federal court to interfere with the state governmental structure. *Largess* v. *Supreme Judicial Court for the State of Massachusetts*, (1st Cir. 2004), June 29, 2004.

ARGUMENT

I. PETITIONERS LACK STANDING TO BRING SUIT GIVEN THEIR LACK OF INJURY.

Petitioners lack standing to challenge the enforcement of the Supreme Judicial Court's ruling in *Goodridge* v. *Department of Public Health*, 440 Mass. 309 (2003). Thus, the Court of Appeals for the First Circuit appropriately denied Petitioners' request for an injunction. "If a party lacks standing to bring a matter before the court, the court lacks jurisdiction to decide the merits of the underlying case." *United States* v. *AVX Corp.*, 962 F.2d 108, 114 (1st Cir. 1992).

Article III of the United States Constitution limits federal jurisdiction to deciding only actual cases and controversies. *Allen* v. *Wright*, 468 U.S. 737, 750, 82 L. Ed. 556, 104 S. Ct. 3315 (1984). Accordingly, the standing doctrine establishes a threshold inquiry in every federal case, asking "whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." *Warth* v. *Seldin*, 422 U.S. 490, 498-99, 45 L.Ed. 2d 343, 95 S.Ct. 2197 (1975).

To establish standing, Petitioners must show (1) that they personally have suffered some actual or threatened injury as a result of the Respondents' putatively illegal conduct; (2) that the injury fairly can

be traced to the challenged action; and (3) that they are likely to be redressed by a favorable decision. *American Postal Workers Union, et al.* v. *Anthony M. Frank*, 968 F.2d 1373 (1st Cir.) (1992) (citing *Valley Forge Christian College* v. *Americans United for Separation of Church and State*, 454 U.S. 464, 472, 70 L. Ed. 2d 700, 102 S.Ct. 752 (1982)). In the instant case, Petitioners fail to pass the three threshold standing queries, and therefore, this Court should dismiss their complaint.

As to the first prong, requiring a showing of personal injury, neither the Petitioners' complaint nor their subsequent filings show any evidence suggesting the Petitioners will or have endured an actual injury as a consequence of the enforcement of the Supreme Judicial Court's *Goodridge* decision. In *Goodridge*, the Supreme Judicial Court held that the Commonwealth's ban on marriage between members of the same sex failed the rational basis test for both due process and equal protection under the Massachusetts Constitution. 440 Mass. 309.

On May 17, 2004, City and Town clerks began issuing marriage licenses to couples of the same sex in accordance with *Goodridge*. The Petitioners ask this Court to enjoin Respondent, Judith A. McCarthy in her official capacity as City Registrar for the City of Boston from executing the law. Petitioners fail to show -- and cannot show -- any evidence that they personally suffered an actual injury or threat of injury as a consequence of the enforcement of *Goodridge*.

Further, as this Court has held, the decision to seek review must be placed "in the hands of those who have a direct stake in the outcome." *Sierra Club* v. *Morton*, 405 U.S. 727, 740, 31 L.Ed. 2d 636, 92 S.Ct. 1361 (1972). Deeply felt interest in the outcome of a case does not constitute an actual injury under the

standing doctrine, and the decision to seek review is not to be placed in the hands of "concerned bystanders," who will use it simply as a vehicle for the vindication of value interests." *United States* v. *SCRAP*, 412 U.S. 669, 687, 93 S.Ct. 2405, 37 L.Ed.2d 254 (1973). The Petitioners lack standing to bring their suit because they cannot show they have suffered or will suffer the requisite injury.

Read liberally, the only possible "injury" Petitioners have suffered, according to their filings, is the consequence of judicial review: a well-established principle since *Marbury* v. *Madison*, 5 U.S. (Cranch) 137 (1803). In fact, the *Goodridge* Court addressed this point eloquently, noting, "the history of constitutional law is the story of extension of constitutional rights and protections to people once ignored or excluded." *Id.* 798 N.E. 2d at 966. (citing *United States* v. *Virginia*, 518 U.S. 515, 557, 135 L.Ed. 735, 116 S.Ct. 2264 (1996)). To the extent that Petitioners are dissatisfied with the Commonwealth of Massachusetts highest court's interpretation of the state constitution, their redress is in the Massachusetts Legislature -- not the federal court.

Because Petitioners cannot meet the first prong of the standing test, this Court need not reach the second and third parts of the standing analysis. In any event, there is no question that Petitioners' filings fail to pass standing muster. Petitioners cannot show that their alleged injury can be fairly traced to the challenged conduct or that the injury likely will be redressed by a favorable decision from the court. For those reasons, the Respondent, Judith A. McCarthy in her Official Capacity as City Registrar for the City of Boston, asks this Court to deny Petitioners' petition for writ of certiorari on the grounds that they lack standing.

II. THE MASSACHUSETTS CONSTITUTION PROVIDES THE SUPREME JUDICIAL COURT WITH THE POWER TO REVIEW THE CONSTITUTIONALITY OF STATE STATUTES.

Assuming *arguendo* that a cognizable injury propels the Petitioners beyond the threshold question of standing, this Court should still deny their request for injunctive relief because their Guarantee Clause claim fails on the merits. Petitioners contend that their right to a republican form of government has been violated by the SJC's interpretation of the Massachusetts Constitution. However, the Supreme Court has never found that the Guarantee Clause of Article IV, § 4, of the United States Constitution confers rights upon ordinary individuals (like Appellants) who are dissatisfied with the outcome of the state's highest court's constitutional law decision. *See* 1 L. Tribe, American Constitutional Law, 910 (3rd ed. 2000).

As the First Circuit wisely noted in its denial of Petitioners' request for injunctive relief pending appeal:

> . . . Goodridge does not establish permanent martial law or declare the Commonwealth a monarchy; and it cannot plausibly be argued that every disagreement about allocation of power within a state government – even a very important disagreement – raises a question under Article IV, § 4. That this disagreement is important is obvious; but, at least so far, it is not obvious why its resolution one way rather than another threatens a republican government.

Largess v. *Supreme Judicial Court for the State of Massachusetts*, (1st Cir.) May 14, 2004.

Accordingly, as the Court of Appeals for the First Circuit has already held, the *Goodridge* decision did not restructure the Commonwealth's form of government, neither did it change the balance of power allocated to the three branches of government pursuant to the Massachusetts Constitution. Rather, as the district court judge reasoned, "The SJC has the authority to interpret, and reinterpret, if necessary the term marriage as it appears in the Massachusetts Constitution." *Largess* v. *Supreme Judicial Court For the State of Massachusetts*, C.A. No. 04-10921-JLT, (May 13, 2004) p. 10. There is simply no evidence to support Petitioners' contention that their Guarantee Clause rights have been violated. In fact, the evidence of record as to the conduct of the Legislative, Judicial and Executive branches of government illustrates the careful balance of power contemplated and allocated by the constitutional framers. The notion that Petitioners' right to a republican form of government has somehow been impeded by the SJC's interpretation of the state constitution is unsupported by the evidence or the principles of judicial review.

There can be no dispute that the Massachusetts Supreme Judicial Court has the power and the authority to review legislation under the state constitution. Further, the federal district courts are precluded from exercising subject matter jurisdiction over issues of state constitutional law. *District of Columbia Court of Appeals* v. *Feldman*, 460 U.S. 462, 476 (1983).

Thus, as the Massachusetts Supreme Judicial Court is the final arbiter of the state Constitution, the federal court cannot review the SJC's *Goodridge*

decision on the merits.[1] There has been no violation of the Petitioners' rights to a republican form of government, and their request for injunction should be denied.

CONCLUSION

Wherefore, Respondent, Judith A. McCarthy, acting in her Official Capacity as the City Registrar for the City of Boston, asks this Court to deny Petitioners' request for injunctive relief as they lack standing and they have failed to show any violation of the Guarantee Clause of the United States Constitution.

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[1] Petitioners seek injunctive relief and no damages against Respondent McCarthy acting in her official capacity as City Registrar for the City of Boston. However, to the extent Petitioners could make out a claim against Respondent McCarthy for damages, she is fully protected by qualified immunity. The principle of qualified immunity provides that "[g]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow* v. *Fitzgerald*, 457 U.S. 800, 818 (1982).

Respectfully submitted,

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